

STATE OF CALIFORNIA  
Budget Change Proposal - Cover Sheet  
DF-46 (REV 08/17)

Fiscal Year 2019-20	Business Unit 7350	Department Department of Industrial Relations	Priority No. 1
Budget Request Name 7350-110-BCP-2019-MR		Program 6105 – DIVISION OF LABOR STANDARDS ENFORCEMENT 9900100 – DIVISION OF ADMINISTRATION	Subprogram 6105040 – FIELD ENFORCEMENT

Budget Request Description  
PAGA Unit Staffing Alignment

Budget Request Summary

The Labor and Workforce Development Agency (LWDA) and the Department of Industrial Relations (DIR) request 12.0 positions and \$2.0 million in resources from the Labor and Workforce Development Fund for the 2019/20 fiscal year and \$1.8 million ongoing to increase the department's capacity to review Private Attorneys General Act (PAGA) cases.

This proposal will also make technical budgetary changes to transfer the oversight of the unit from the DIR Director's Office to the Labor Commissioner's Office, who will act as LWDA's "designee" pursuant to Labor Code 2699.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO Ben Bonte	Date 4/2/19
For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date. Project No. 7350-087      Project Approval Document: S1BA      Approval Date: 06/24/16 Remaining levels delegated to DIR; M&O currently.		

If proposal affects another department, does other department concur with proposal? ☐ Yes ☐ No  
*Attach comments of affected department, signed and dated by the department director or designee.*

Prepared By Michael Smith	Date 4/2/19	Reviewed By Jill Garcia	Date 4/2/19
Department Director Victoria Hassid	Date 4/2/19	Agency Secretary Julie A. Su	Date 4/2/19

Department of Finance Use Only

Additional Review: ☐ Capital Outlay ☐ ITCU ☐ FSCU ☐ OSAE ☐ CALSTARS ☐ Dept. of Technology

PPBA Original Signed By Danielle Brandon	Date submitted to the Legislature 5/10/19
--	--

# BCP Fiscal Detail Sheet

BCP Title: PAGA Unit Staffing Alignment

BR Name: 7350-110-BCP-2019-MR

## Budget Request Summary

	FY19					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Personal Services						
Positions - Permanent	0.0	12.0	12.0	12.0	12.0	12.0
<b>Total Positions</b>	<b>0.0</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>
Salaries and Wages						
Earnings - Permanent	0	936	936	936	936	936
<b>Total Salaries and Wages</b>	<b>\$0</b>	<b>\$936</b>	<b>\$936</b>	<b>\$936</b>	<b>\$936</b>	<b>\$936</b>
Total Staff Benefits	0	533	533	533	533	533
<b>Total Personal Services</b>	<b>\$0</b>	<b>\$1,469</b>	<b>\$1,469</b>	<b>\$1,469</b>	<b>\$1,469</b>	<b>\$1,469</b>
Operating Expenses and Equipment						
5301 - General Expense	0	19	19	19	19	19
5302 - Printing	0	6	6	6	6	6
5304 - Communications	0	22	13	13	13	13
5306 - Postage	0	17	17	17	17	17
5320 - Travel: In-State	0	24	24	24	24	24
5322 - Training	0	4	4	4	4	4
5324 - Facilities Operation	0	169	169	169	169	169
5344 - Consolidated Data Centers	0	48	48	48	48	48
5346 - Information Technology	0	91	52	52	52	52
5368 - Non-Capital Asset Purchases - Equipment	0	103	1	1	1	1
<b>Total Operating Expenses and Equipment</b>	<b>\$0</b>	<b>\$503</b>	<b>\$353</b>	<b>\$353</b>	<b>\$353</b>	<b>\$353</b>
<b>Total Budget Request</b>	<b>\$0</b>	<b>\$1,972</b>	<b>\$1,822</b>	<b>\$1,822</b>	<b>\$1,822</b>	<b>\$1,822</b>
<b>Fund Summary</b>						
Fund Source - State Operations						
3078 - Labor and Workforce Development Fund	0	1,972	1,822	1,822	1,822	1,822
<b>Total State Operations Expenditures</b>	<b>\$0</b>	<b>\$1,972</b>	<b>\$1,822</b>	<b>\$1,822</b>	<b>\$1,822</b>	<b>\$1,822</b>
<b>Total All Funds</b>	<b>\$0</b>	<b>\$1,972</b>	<b>\$1,822</b>	<b>\$1,822</b>	<b>\$1,822</b>	<b>\$1,822</b>

## Program Summary

Program Funding

6105040 - Field Enforcement	0	1,972	1,822	1,822	1,822	1,822
9900100 - Administration	0	-948	-973	-973	-973	-973
9900200 - Administration - Distributed	0	948	973	973	973	973
<b>Total All Programs</b>	<b>\$0</b>	<b>\$1,972</b>	<b>\$1,822</b>	<b>\$1,822</b>	<b>\$1,822</b>	<b>\$1,822</b>

## Personal Services Details

Positions		Salary Information			<u>CY</u>	<u>BY</u>	<u>BY+1</u>	<u>BY+2</u>	<u>BY+3</u>	<u>BY+4</u>
		Min	Mid	Max						
1139	- Office Techn (Typing) (Eff. 07-01-2019)				0.0	0.0	0.0	0.0	0.0	0.0
1402	- Info Tech Spec I (Eff. 07-01-2019)				0.0	2.0	2.0	2.0	2.0	2.0
4175	- Auditor I (Eff. 07-01-2019)				0.0	0.0	0.0	0.0	0.0	0.0
5237	- Legal Analyst (Eff. 07-01-2019)				0.0	0.0	0.0	0.0	0.0	0.0
5393	- Assoc Govtl Program Analyst (Eff. 07-01-2019)				0.0	4.0	4.0	4.0	4.0	4.0
5778	- Atty (Eff. 07-01-2019)				0.0	2.0	2.0	2.0	2.0	2.0
5780	- Atty IV (Eff. 07-01-2019)				0.0	0.0	0.0	0.0	0.0	0.0
8610	- Investigator (Eff. 07-01-2019)				0.0	0.0	0.0	0.0	0.0	0.0
9502	- Dep Labor Commissioner I (Eff. 07-01-2019)				0.0	2.0	2.0	2.0	2.0	2.0
9504	- Dep Labor Commissioner III (Eff. 07-01-2019)				0.0	0.0	0.0	0.0	0.0	0.0
9536	- Dep Labor Commissioner II (Eff. 07-01-2019)				0.0	2.0	2.0	2.0	2.0	2.0
<b>Total Positions</b>					<b>0.0</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>	<b>12.0</b>

Salaries and Wages		<u>CY</u>	<u>BY</u>	<u>BY+1</u>	<u>BY+2</u>	<u>BY+3</u>	<u>BY+4</u>
1139	- Office Techn (Typing) (Eff. 07-01-2019)	0	0	0	0	0	0
1402	- Info Tech Spec I (Eff. 07-01-2019)	0	166	166	166	166	166
4175	- Auditor I (Eff. 07-01-2019)	0	0	0	0	0	0
5237	- Legal Analyst (Eff. 07-01-2019)	0	0	0	0	0	0
5393	- Assoc Govtl Program Analyst (Eff. 07-01-2019)	0	278	278	278	278	278
5778	- Atty (Eff. 07-01-2019)	0	184	184	184	184	184
5780	- Atty IV (Eff. 07-01-2019)	0	0	0	0	0	0
8610	- Investigator (Eff. 07-01-2019)	0	0	0	0	0	0
9502	- Dep Labor Commissioner I (Eff. 07-01-2019)	0	143	143	143	143	143
9504	- Dep Labor Commissioner III (Eff. 07-01-2019)	0	0	0	0	0	0
9536	- Dep Labor Commissioner II (Eff. 07-	0	165	165	165	165	165



01-2019)

**Total Salaries and Wages**

\$0	\$936	\$936	\$936	\$936	\$936
-----	-------	-------	-------	-------	-------

Staff Benefits

5150350 - Health Insurance

0	57	57	57	57	57
---	----	----	----	----	----

5150600 - Retirement - General

0	275	275	275	275	275
---	-----	-----	-----	-----	-----

5150900 - Staff Benefits - Other

0	201	201	201	201	201
---	-----	-----	-----	-----	-----

**Total Staff Benefits**

\$0	\$533	\$533	\$533	\$533	\$533
-----	-------	-------	-------	-------	-------

**Total Personal Services**

\$0	\$1,469	\$1,469	\$1,469	\$1,469	\$1,469
-----	---------	---------	---------	---------	---------

<b>POV</b>	
Year	FY19
Department	7350
House	MR Working
BR Name	7350-110-BCP-2019-MR
Run Time	05/08/2019 01:21:31 PM
Last Data Refresh	05/08/2019, 01:20 PM

## A. Budget Request Summary

The Labor and Workforce Development Agency (LWDA) and the Department of Industrial Relations (DIR) request 12.0 positions and \$2.0 million in resources from the Labor and Workforce Development Fund (LWDF) for the 2019/20 fiscal year and \$1.8 million ongoing to increase the department's capacity to review Private Attorneys General Act (PAGA) cases.

This proposal will also make technical budgetary changes to transfer the oversight of the unit from the DIR Director's Office to the Labor Commissioner's Office, who will act as LWDA's "designee" pursuant to Labor Code 2699.

## B. Background/History

The PAGA, enacted in 2003 (Labor Code Sections 2698 - 2699), allows California employees to enforce the Labor Code through private lawsuits against their employers, recovering penalties for Labor Code violations that previously could only be pursued by the Labor Commissioner and other divisions within DIR. As amended in 2016, PAGA permits employees or their representatives to initiate a case by sending a notice to the employer and the LWDA that identifies the alleged violations and the facts and theories supporting the claims. The LWDA then has 60 days to decide whether to investigate the notice. If it does investigate, it has up to 180 more days to cite or sue the employer. The LWDA's issuance of a citation or the filing of a civil complaint will preclude private litigation over the same violation. If the LWDA does not cite or sue the employer, the plaintiff may proceed with a private lawsuit. The PAGA allows plaintiffs to retain 25% of the civil penalties recovered in a PAGA case, with the remaining 75% of the penalties deposited into the LWDF.

The 2016 Budget Act approved an increase of 9.0 positions<sup>1</sup> and \$1.3 million ongoing for DIR to review PAGA cases to help ensure that the interests of the state are adequately served; the 2016/17 Budget Change Proposal (BCP) initially required a more detailed notice form to allow staff to more quickly review the particulars of each case. Subsequent budget negotiations resulted in a notice which contained less detail than originally proposed by the department. In part because of this lack of detail, the department has found that the review/investigation of each case requires more time.

Additionally, there are several key insights gained from the experience of the PAGA Unit since it was established: (1) The Unit reviewed more PAGA notices than had been forecast in 2016; (2) However, as noted above, additional work and time were required to review/investigate each case; (3) The Unit investigated fewer cases than forecast, but the cases identified and prosecuted were high-impact and correspondingly work-intensive for investigators, attorneys and support staff; 4) The substantial majority of proposed private court settlements in PAGA cases reviewed by the Unit fell short of protecting the interests of the state and workers.

**Resource History**  
(Dollars in thousands)

Program Budget	2013/14	2014/15	2015/16	2016/17	2017/18
Authorized Expenditures	-	-	-	\$1,361	\$1,293
Actual Expenditures	-	-	-	\$792	\$1,293
Revenues	\$5,680	\$8,365	\$13,531	\$21,727	\$34,401
Authorized Positions	-	-	-	9.0	9.0
Filled Positions	-	-	-	5.3	9.0
Vacancies	-	-	-	3.7	0.0

<sup>1</sup> The 2016 Budget Act also included 1.0 position and \$199,000 ongoing for LWDA to fulfill its PAGA oversight responsibilities.



## Workload History

Workload Measure	2013/14	2014/15	2015/16	2016/17 <sup>2</sup>	2017/18
PAGA Notices Filed <sup>3</sup>	7,626	6,307	5,510	3,707	5,383
Notices Reviewed	N/A	N/A	N/A	1,694	1,339
Pre-Investigations	N/A	N/A	N/A	23	26
Case Investigations (cases retained)	N/A	N/A	N/A	14	16
Number of PAGA Notices in which one or more violations is curable <sup>4</sup>	N/A	N/A	N/A	1,629	2,195
Number of Employer Responses/Cures filed	N/A	N/A	N/A	121	261
Number of Cure Disputes	N/A	N/A	N/A	24	53
Cure Decisions Issued	N/A	N/A	N/A	1	27
Settlements Reviewed	N/A	N/A	N/A	476	1,070

### C. State Level Considerations

LWDA remains committed to reducing unnecessary civil litigation and lowering the costs of doing business in California to support a thriving economic environment, and ensuring fair and legal private settlement agreements and to ensure that the PAGA is not abused by those who may leverage the threat of litigation on behalf of many workers to benefit only a few.

### D. Justification

As reflected in the Workload History chart above, the PAGA Unit was created in 2016 prior to any systematic tracking of pertinent data, and with little experience to use as a baseline to identify the staffing levels needed. As mentioned in the *Background* section of this document, the difficulties presented by this lack of baseline data were exacerbated by a notice whose lack of detail resulted in a lengthier and labor intensive notice review and “pre-investigation” time frame. The experience gained now allows the department to identify the additional resources needed not only to achieve the objectives of the 2016/17 proposal, but to also accomplish necessary work not originally envisioned. This work is summarized in the sections below.

#### 1. Reviewing PAGA notices and making pre-investigative inquiries to determine whether to accept cases for investigation or authorize commencement of private litigation.

The PAGA Unit reviewed 1,694 and 1,339 PAGA notices in the last two fiscal years, respectively, both greater numbers than the yearly 900 anticipated in the 2016/17 BCP. The PAGA Unit will continue to review PAGA notices and choose certain cases for investigation. As mentioned previously, the unit has 60 days after a notice is filed to determine whether to investigate the underlying claims. While a cursory review of the notices was contemplated in the 2016/17 proposal to identify potential cases for investigation, the need to examine this subset of cases in greater detail before making a decision about whether or not to formally investigate them was not anticipated. The proactive investment of time spent examining PAGA notices up front produces better targets for investigations and leads to more impactful enforcement outcomes.

<sup>2</sup> The online filing system was established on September 6, 2016. Figures listed for this year reflect partial information beginning on that date.

<sup>3</sup> Online system delays and duplicate filings may have resulted in an overestimated number of notices. The PAGA Unit is currently working to fix this data integrity issue.

<sup>4</sup> The overwhelming majority of curable violations are the failure of wage statements to state the inclusive dates of the pay period and the employer’s correct legal name and address, required by Labor Code section 226, subd. (a)(6) and (a)(8), respectively.



To effectively evaluate a case for investigation, the Unit must carry out an additional inquiry beyond reading the PAGA notice. For example, a notice may initially appear to have merit and the surrounding circumstances (e.g., low wage earners in the underground economy) may appear appropriate for the unit to investigate, but more information may be needed to determine how credible, complex and prevalent the alleged violations are. The Unit's inquiry may consist of such actions as informal interviews with the filing attorney and employees, interviews and document requests of the employer, and research about the employer, including its history of violations, business, website, reviews and company owners' or managers' online footprints. The Unit requests documents from the employer, such as written policies and sample timekeeping and payroll documents.

PAGA Unit attorneys have been intimately involved and active in supporting pre-investigative inquiries, reviewing and interpreting: other lawsuits by the filing attorney and against the employer (published decisions, court dockets, etc.); law firm websites; online reviews; California State Bar website; and other LWDA cases, including notices and settlements. The inquiry process also includes legal research of issues, including case trends, such as misclassification or use of outside delivery drivers. Such inquiries can take considerable time, in particular when they require parties to gather and provide documents for the Unit to review.

### **2. Increased staffing for case investigation and determining whether to cite or sue the employer for Labor Code violations, or settle claims with the employer within PAGA's strict statutory time frames.**

The increased quantity and quality of investigation leads generated through the pre-investigation inquiry process discussed above will require additional enforcement resources. The resources requested by this proposal will have investigatory impact by allowing the unit to carry out all necessary enforcement related activities within the 180-day statutory time frame to cite or sue an employer.

**a. Background Procedure.** Once the PAGA Unit issues a notice to investigate a PAGA claim, it has 120 days (which can be extended by an additional 60 days) within which to either cite or sue the employer. During that investigation period, the PAGA Unit is expected to: request and review pertinent documents; identify and interview witnesses; take depositions of key employer witnesses; enforce in superior court any discovery requests for which adequate responses have not been provided; make any site visits; complete audits of payroll and time records; analyze the evidence to determine whether the employer violated any Labor Code provisions; engage in settlement discussions, if appropriate; determine whether to cite or sue the employer; and review the employer's financial records in the context of settlement discussions.

LWDA's issuance of a citation or the filing of a civil action precludes a private civil action on the same violation. Accordingly, the decision about whether to cite or sue an employer is a complex one because, even if the employer is generally found to be compliant with labor laws, the employer frequently asks the LWDA to cite and/or sue the employer, so that aggrieved plaintiffs won't otherwise be able to pursue claims against the employer for the claimed violations.

While LWDA normally cites, rather than sues, an employer it has found in violation of the Labor Code, there are certain Labor Code violations, such as failure to provide or inform employees of their entitlement to paid sick leave (Lab. Code 245 et seq.), for which there is no enabling statute permitting the Labor Commissioner to issue a citation. In such cases, the Labor Commissioner must pursue civil, not administrative, litigation.

**b. More Significant Investigations.** PAGA notices have proven to be high quality leads identifying serious violations that in many cases would otherwise have remained underground. Each PAGA notice is submitted by a private attorney after the attorney has done an initial investigation with workers, and it helpfully identifies alleged wrongdoing employers and contact information for



potentially aggrieved employees. The effort the PAGA Unit put into its investigations and prosecutions resulted in several high impact results:

- The PAGA Unit settled a case in February 2019 with an employer it had cited for an intentional failure to pay employees overtime premium pay (1.5x) and systematic failure to provide sufficient or timely meal breaks. The settlement amount was \$1.1 million, with \$1 million to be paid to employees.
- The PAGA Unit issued citations exceeding \$4 million for an employer's misclassifying as independent contractors its employees, who were paid a flat daily rate for up to 14 hours of work performing dangerous rodent, debris and insulation removal in hot, confined spaces in private homes. Based on the PAGA Unit's referral, the district attorney filed felony charges against the company owner, and is demanding full restitution for the workers.
- The PAGA Unit issued several citations totaling over \$3 million to ten interconnected meat processing entities operating in the underground economy that jointly employed 100 employees, most of whom were intentionally misclassified.

If approved, this proposal will allow the department to expand on these early results.

**c. Robust Investigative Structure.** Given the strict, 180-day limit for case investigation, maintaining enforcement continuity and momentum in the PAGA Unit is critical. Unnecessary delays and defaults inherent to the current staffing structure could be mitigated by cross training and additional staff with complementary skills. Additional deputy bandwidth is needed to increase flexibility in handling complex, time-consuming investigations, for example, to assign multiple investigators to a case when there are a number of witnesses to be interviewed. The greater flexibility provided by deeper staffing is imperative because, as noted above, the PAGA only allows the LWDA 180 days to complete an investigation, no matter how egregious or widespread the violations. Sufficient staffing will ensure on-time, effective investigations under these circumstances.

**d. Larger role for attorneys in investigations and hearing preparation.** LWDA also seeks augmented attorney staffing for the Unit, as its attorneys have frequently engaged not only in routine written discovery such as document subpoenas that was anticipated in the 2016/17 BCP, but also for more involved activities such as employer witness depositions and superior court actions in support of investigations, such as enforcement of document subpoenas and investigative warrants.

The 2016/17 proposal correctly anticipated that most cases in which the Unit issued citations would be resolved by settlement after issuance of an administrative citation that is subject to an appeal and litigation by the employer. As anticipated, preparing for hearing requires a major commitment of resources and professional staff time following the citation or complaint. The LWDA's goal has been to cite and settle with the employer in order to largely avoid this commitment. However, the Unit's experience has been that, even in cases that do settle, it can only obtain a satisfactory settlement after fully preparing the case for hearing, including legal research and briefing, full review of evidence including investigative reports, interview notes and employer records, preparation of employee witnesses, and compilation and assembly of exhibits. Only then have Unit attorneys best been able to evaluate the credibility, strength and true value of the case. Moreover, often the cited employer and its attorney have not put in sufficient work to understand their liability until the eve of hearing.

For cases that proceed to hearing, the employer may vigorously dispute the citations and raise legal arguments requiring a legally researched response.

### **3. Issuing decisions on cure disputes.**

PAGA permits employers to cure certain types of Labor Code violations (most commonly, wage statement violations) within 33 days of the date of the filing of the PAGA notice before the aggrieved employee can file a civil action. Curing a violation means that the employer abates each alleged



violation, the employer is in compliance with the underlying statutes, and any aggrieved employee is made whole. After the employer purports to cure the violations, the employee has a right to dispute that the employer cured the violation. When the employee disputes the cure, the LWDA is required to issue a decision within 17 days concluding whether the curable violations have been cured. If the LWDA determines that the violation has been cured, the employee is not permitted to file a civil complaint on that violation. The employee may only appeal that determination to the superior court. Cures have the potential to decrease civil litigation on PAGA matters, decrease costs for employers and promptly correct less serious violations. When an employer attempts to cure an eligible violation, and that cure is not disputed, that particular violation may not be pursued in litigation. Likewise, when LWDA determines that a violation has been cured, that violation may not be cited in a civil complaint, unless the employee has successfully appealed LWDA's decision.

While 44% of PAGA notices filed between September 6, 2016 and June 31, 2017 cited at least one curable violation, only 7% of employers in such cases attempted cures. Likewise, approximately 41% of PAGA notices filed in 2017/18 cited at least one curable violation, but only 12% of employers in such cases attempted cures. Furthermore, only 20% of attempted cures were disputed.

Given that cures can resolve disputes in a more expeditious and cost-effective way to the parties, they should be promoted where appropriate. Two of the most probable reasons why more cures are not attempted are that: 1) an employer is not aware of the option to cure and/or does not understand how to cure a violation; and/or 2) there are multiple violations cited in the notice, and the employer concludes that curing those violations that are curable will not resolve the remainder of the violations and, thus, will not prevent litigation.

The PAGA Unit issued 28 cure decisions between September 6, 2016 and June 31, 2018. These decisions, always carried out by PAGA Unit attorneys, require requesting and reviewing legal position statements and declarations from employers and PAGA claimants, as well as independent legal research and drafting a cure dispute decision. This workload was not contemplated in the 2016/17 BCP but requires staff support for the increased demand for cure decisions anticipated with growing awareness of this option.

#### **4. Settling cases and litigating and managing resolution of cases in which the PAGA Unit has cited or sued the employer.**

The PAGA Unit has settled nine of the cases in which it has cited or sued employers, and is in settlement discussions on two additional cases. To that end, employers have paid or agreed to pay \$3,375,978.68 in wages to the LWDA for employees and \$565,297.00 to LWDA in penalties for the LWDF.

Staff will continue to litigate cases and engage in settlement discussions of cases in which the PAGA Unit has cited or sued employers. Among other things, cases investigated by the state tend to resolve much more quickly with a better outcome for workers in terms of back wages recovered, promptness of payments, and commitments to future compliance, than private PAGA litigation. They also save employers considerable litigation costs and potential liability for plaintiffs' attorneys' fees.

#### **5. Submission of comments to courts in response to proposed settlement agreements.**

An attorney reviews each proposed court settlement submitted to the LWDA for specific criteria evidencing legality, fairness and robustness or lack thereof, such as overbreadth, requiring a claim to receive money, or reversions of funds to the employer or settlements which favor the PAGA plaintiff to the detriment of other aggrieved employees. This review has revealed that the substantial majority of proposed settlement agreements proposed to superior courts and filed with the LWDA did not sufficiently protect the interest of workers and the state. Though current staffing provides some bandwidth to file comments in response to proposed settlement agreements, LWDA seeks additional staffing to augment this function.



Seventy-five percent of the 1,546 settlement agreements reviewed by the PAGA Unit in fiscal years 2016/17 and 2017/18 received a grade of fail or marginal pass, reflecting the failure of many private plaintiffs' attorney to fully protect the interests of the aggrieved employees and the state. It is natural for courts to approve settlement agreements when all the parties they have heard from – the plaintiff and defendant – advocate in favor of a particular outcome. LWDA has to date taken a cautious approach regarding submission of comments regarding proposed settlements of PAGA claims, only filing comments to proposed settlement agreements in 4 cases. However, the number and type of inadvisable and unlawful settlement provisions which are being proposed and presumably approved militate for the more frequent submission of comments, with the goal of influencing settlements in a positive way. In addition, the submission of comments regarding private PAGA settlements contemplated by this proposal should deliver better wage recoveries.

In order to influence the courts to better evaluate settlements, and to further the goal of settlements that follow the law and protect the interests of the state and employees, we propose filing comments in a number of cases per year sufficient to incentivize fair and appropriate settlement agreements across the state and establish a presence in the courts, with attorneys, and for the public to increase understanding of proper settlement terms. We estimate eight to ten cases per year as an appropriate number of cases in which to file comments to achieve these goals.

### **6. Submit amicus briefs in important cases.**

In the universe of privately litigated PAGA cases, every year a handful of cases make it up to the appellate level that implicate the interpretation or application of the PAGA. LWDA proposes to be more active in filing amicus briefs and letters in a limited number of appellate cases that interpret the PAGA, and thereby to play a role in establishing case law consistent with the law's intent.

### **7. Seeking additional data about the filing of PAGA notices and civil complaints.**

The PAGA notice is the original letter stating the plaintiff-employee's intent to sue his or her employer and the basis for the claims. Less than 50% of all notices filed since September 2016 actually result in civil complaints. This means many PAGA cases are resolving or disappearing before the complaint is filed in civil court. There are multiple factors that could contribute to the lower number of civil complaints filed as compared to notices. Among those is that: 1) employees are not aware that they are required to (as of July 1, 2016) lodge civil complaints with the LWDA after filing them in court; 2) employees simply choose not to file such complaints with the LWDA; 3) cases are being settled prior to going to court; and 4) employees are abandoning their claims. The Unit is finding instances of each of the foregoing. Because one of the concerns expressed about PAGA is that some plaintiffs and attorneys pursue claims (frivolous and otherwise) only to settle quickly for little money, the numbers are worth investigating further. Since we have some data to now analyze, more time and effort will need to be put into developing the data and informing the administration and legislature about the nature and effects of PAGA.

## **E. Outcomes and Accountability**

Please refer to Attachment I for detailed Workload Data and projected outcomes by classification for each of the requested positions.



## Analysis of Problem

### Projected Outcomes

Workload Measure	2018/19 <sup>5</sup>	2019/20 <sup>6</sup>	2020/21	2021/22	2022/23	2023/24
PAGA Notices Filed	5,718	6,074	6,452	6,853	7,280	7,733
Notices Reviewed	244	366	488	488	488	488
Pre-Investigations	25	37	49	49	49	49
Case Investigations (cases retained)	16	23	30	30	30	30
Number of PAGA Notices in which one or more violations is curable	1,912	2,103	2,314	2,545	2,799	3,079
Number of Employer Responses/Cures filed	287	316	347	382	420	462
Number of Cure Disputes	58	64	71	78	85	94
Cure Decisions Issued	28	38	48	48	48	48
Settlements Reviewed	773	928	1,005	1,005	1,005	1,005
Court Comments Regarding Settlements	2	6	9	9	9	9
Amicus Briefs	1	4	6	6	6	6

## F. Analysis of All Feasible Alternatives

### 1. Deny this Request

Pro: None

Con: Denial of this request will hinder the necessary examination of all but a very small sample of PAGA cases.

### 2. Approve 197.0 positions and \$29 million to allow for a statistically relevant number cases to be investigated annually<sup>7</sup>

Pro: This alternative would arguably right-size the unit, and help inform future policy decisions.

Con: Notwithstanding the above, the proposed alternative identifies the number of staff that could be feasibly hired and trained in a reasonable time frame.

### 3. Approve this request for 12.0 positions and \$2.0 million in 2019/20 and \$1.8 million ongoing

Pro: This alternative will allow for an achievable expansion of the unit in a realistic time frame that will help inform future policy decisions.

Con: None

## G. Implementation Plan

Once approved, hiring for all positions will be established for the 2019/20 fiscal year.

<sup>5</sup> 2018/19 outcomes were estimated based on productivity to date, projected for the full year.

<sup>6</sup> Productivity levels will increase as new staff are hired and fully trained.

<sup>7</sup> This alternative assumes approximately five percent of PAGA cases received annually will be investigated (retained).

### **H. Supplemental Information**

See Attachment II for a Fund Condition Statement for the LWDF.

### **I. Recommendation**

Approve this request for 12.0 positions and \$2.0 million in resources from the LWDF for the 2019/20 fiscal year and \$1.8 million ongoing to increase the department's capacity to review PAGA cases, and to make technical budgetary changes to transfer the oversight of the unit from the DIR Director's Office to the Labor Commissioner's Office, who will act as LWDA's "designee" pursuant to Labor Code 2699.

Department of Industrial Relations  
 Division of Labor Standards Enforcement  
 2019-20 Budget Change Proposal: PAGA UNIT STAFFING ALIGNMENT  
 Workload Data

Attachment I

Deputy Labor Commissioner I

Activity	Historical and Projected Workload					
	Actual Number of Activities		Average Hours Per Activity	Increased Activity		
	2016/17	2017/18		# of Tasks per Year	Associated Annual Hours	Additional Staff Requested (1,776 hours per position)
Conduct pre-investigative inquiries to determine whether to accept cases for investigation or authorize commencement of private litigation	23	26	40.00	12	480	
Complex Case Investigations (cases retained)	5	5	477.50	2	955	
Moderately Complex Case Investigations (cases retained)	5	5	365.00	5	1,825	
Less Complex Investigations (cases retained)	4	6	250.00	0	0	
Public Information Duty	24	24	4.00	24	96	
Training (field enforcement, citation, calculation, judgment enforcement, public information duty)	2	2	96.00	2	192	
Total Increased Activity					3,548	2.0



Department of Industrial Relations  
Division of Labor Standards Enforcement  
2019-20 Budget Change Proposal: PAGA UNIT STAFFING ALIGNMENT  
Workload Data

Attachment I

Deputy Labor Commissioner II

Activity	Historical and Projected Workload					
	Actual Number of Activities		Average Hours Per Activity	Increased Activity		
	2016/17	2017/18		# of Tasks per Year	Associated Annual Hours	Additional Staff Requested (1,776 hours per position)
Conduct pre-investigative inquiries to determine whether to accept cases for investigation or authorize commencement of private litigation	N/A	N/A	40.00	12	480	
Complex Case Investigations (cases retained)	N/A	N/A	477.50	5	2,388	
Moderately Complex Case Investigations (cases retained)	N/A	N/A	365.00	2	730	
Public Information Duty	N/A	N/A	4.00	24	96	
Training (field enforcement, citation, calculation, judgment enforcement, public information duty)	N/A	N/A	96.00	2	192	
Total Increased Activity					3,886	2.0



Department of Industrial Relations  
Division of Labor Standards Enforcement  
2019-20 Budget Change Proposal: PAGA UNIT STAFFING ALIGNMENT  
Workload Data

Attachment I

Attorney

Activity	Historical and Projected Workload					
	Actual Number of Activities		Average Hours Per Activity	Increased Activity		
	2016/17	2017/18		# of Tasks per Year	Associated Annual Hours	Additional Staff Requested (1,776 hours per position)
Legal, factual research in pre-investigative inquiries	9	9	8.00	24	192	
Taking depositions of employer witnesses from investigation discoveries	6	6	42.00	14	588	
Superior Court Petitions from PAGA investigations	2	2	40.00	2	80	
Hearing Preparation: legal research and briefing, review of evidence (investigative reports, notes, employer records), preparation of witnesses, compilation & assembly of exhibits	8	8	200.00	6	1,200	
Post-Hearing Brief	0	1	40.00	1	40	
Issuing decisions on cure disputes	1	27	16.00	20	320	
Comment submission to courts in response to proposed settlement agreements (review briefs & record, legal research & drafting, review by colleagues, attend hearing)	2	2	56.00	7	392	
Preparation and submission of Amicus briefs in important cases (review briefs & record, legal research and drafting, review by colleagues)	N/A	N/A	120.00	5	600	
Training, attendance at BOFE Attorney meetings	2	2	100.00	2	200	
Total Increased Activity					3,612	2.0

Department of Industrial Relations  
 Division of Labor Standards Enforcement  
 2019-20 Budget Change Proposal: PAGA UNIT STAFFING ALIGNMENT  
 Workload Data

Attachment I

Associate Governmental Program Analyst (AGPA)

Activity	Historical and Projected Workload					
	Actual Number of Activities		Average Hours Per Activity	Increased Activity		
	2016/17	2017/18		# of Tasks per Year	Associated Annual Hours	Additional Staff Requested (1,776 hours per position)
Review PAGA notices	1,694	1,339	0.50	244	122	
Maintain PAGA database	N/A	N/A	4.00	50	200	
Public Information Request correspondence	N/A	N/A	1.00	50	50	
Complex Case Investigations (cases retained)*	N/A	N/A	477.50	7	3,343	
Moderately Complex Case Investigations (cases retained)*	N/A	N/A	365.00	7	2,555	
Total Increased Activity					6,270	4.0

\* The AGPAs will assist the Deputy Labor Commissioners by performing the essential auditing functions of each investigation.



Department of Industrial Relations  
Division of Administration - Office of Information Services  
2019-20 Budget Change Proposal: PAGA UNIT STAFFING ALIGNMENT  
Workload Data

Attachment I

Information Technology Specialist I

Activity	Historical and Projected Workload					
	Actual Number of Activities		Average Hours Per Activity	Increased Activity		
	2016/17	2017/18		# of Tasks per Year	Associated Annual Hours	Additional Staff Requested (1,776 hours per position)
Review, analyze, and prioritize Service Requests and Change Requests for the PAGA system	103	112	8.00	108	864	
Gather and document business requirements and identify technical specifications	2	2	120.00	2	240	
Plan and manage schedule, resources, issues/risks, and deliverables for maintenance and operations system updates.	2	2	120.00	2	240	
Develop test plans and test cases for Quality Assurance (QA) and User Acceptance Testing (UAT)	2	2	120.00	2	240	
Conduct unit, functional, integration, and regression testing	20	24	8.00	24	192	
Manage the development, integration, and testing environments and deployments	20	24	8.00	24	192	
Provide support for user administration changes and profile updates	60	55	1.00	55	55	
Provide maintenance and operations support for the PAGA system, i.e. intake forms and document management	103	112	8.00	108	864	
Develop and implement moderate complexity system changes to support change requests and system upgrades for PAGA to meet modified needs.	6	6	80.00	6	480	
Create reports and dashboards	6	6	24.00	6	144	
Investigate and implement fixes to public inquiries regarding the system, i.e. public form errors and email notifications	36	36	8.00	36	288	
Evaluate and respond to PRA requests. Provide data and attachment extracts to generate reports and requested information.	2	2	80.00	2	160	
<b>Total Increased Activity</b>					<b>3,959</b>	<b>2.0</b>

**2019/20 Budget Change Proposal  
PAGA Unit Staffing Alignment  
FUND CONDITION STATEMENT  
(dollars in thousands)**

Attachment II

	Actual 2015-16	Actual 2016-17	Actual 2017-18	Estimated 2018-19	Projected 2019-20	Projected 2020-21
<b>3078 Labor and Workforce Development Fund</b>						
<b>BEGINNING BALANCE</b>	\$14,239	\$22,074	\$37,210	\$65,080	\$90,290	\$113,484
Prior Year Adjustments	-202	282	5	-	-	-
Adjusted Beginning Balance	14,037	22,356	37,215	65,080	90,290	113,484
<b>REVENUES, TRANSFERS, AND OTHER ADJUSTMENTS</b>						
Revenues:						
4121800 Employment Agency Filing Fees	-	287	333	333	333	333
4173500 Settlements and Judgements - Other	13,531	21,440	34,068	34,000	34,000	34,000
Total Revenues, Transfers, and Other Adjustments	13,531	21,727	34,401	34,333	34,333	34,333
Total Resources	27,568	44,083	71,616	99,413	124,623	147,817
<b>EXPENDITURES</b>						
Expenditures:						
0559 Secretary for Labor and Workforce Development Agency (State Operations)	322	355	331	434	447	447
7300 Agricultural Labor Relations Board (State Operations)	830	971	1,013	1,233	1,233	1,233
7350 Department of Industrial Relations (State Operations)	4,332	4,892	4,561	6,749	6,809	6,809
2019/20 BCP: PAGA Unit Staffing Alignment					1,972	1,822
8880 Financial Information System for California (State Operations)	-	7	10	1	-1	-
9892 Supplemental Pension Payments (State Operations)	-	-	-	41	74	74
9900 Statewide General Administrative Expenditures (Pro-Rata) (State Operations)	10	648	621	665	605	605
Total Expenditures	5,494	6,873	6,536	9,123	11,139	10,990
<b>FUND BALANCE</b>	\$22,074	\$37,210	\$65,080	\$90,290	\$113,484	\$136,827
Reserve for economic uncertainties	22,074	37,210	65,080	90,290	113,484	136,827